

VOL. I
PAGES 1-52
EXHIBITS 1-3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 03-10062-DPW

LINCOLN SMITH,
Plaintiff
vs.

CITY OF BOSTON, BOSTON INSPECTIONAL
SERVICES AND KEVIN JOYCE (As Commissioner,
Department of Inspectional Services, and
Individually)
Defendants

DEPOSITION OF JOHN J. DORSEY, JUNIOR,
taken on behalf of the plaintiff, pursuant to
the applicable provisions of the Federal Rules
of Civil Procedure, before Irma Widomski, a
Registered Merit Reporter, and Certified
Shorthand Reporter, No. 131593 in and for the
Commonwealth of Massachusetts, at the offices of
Stopa & Associates, 36-38 Mechanic Street, Suite
208, Foxboro, Massachusetts, on Friday, February
20, 2004, commencing at 10:45 a.m.

BEACON HILL COURT REPORTING
44 BAYSWATER STREET
BOSTON, MASSACHUSETTS 02128
(617) 569-8050

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PRESENT:

Stopa & Associates, LLC
(by George F. Ohlson, Jr., Esquire)
36-38 Mechanic Street, Suite 208,
Foxboro, Massachusetts 02035
For the plaintiff

City of Boston
(by James M. Chernetsky, Esquire)
Assistant Corporation Counsel
Boston City Hall, Room 615
Boston, Massachusetts 02201
For the defendants

Also Present: Lincoln Smith

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I N D E X

WITNESS: DIRECT CROSS REDIRECT RECROSS

John J. Dorsey, Jr.

BY Mr. Ohlson 4 49
BY Mr. Chernetsky 46

E X H I B I T S

NO. PAGE DESCRIPTION

1 27 Boston Globe article
2 32 Article
3 39 Letter, 12/28/00

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JOHN J. DORSEY, JUNIOR

a witness first having been duly sworn, under
oath deposes and says as follows:

DIRECT EXAMINATION

MR. OHLSON:

Q. Mr. Dorsey, my name is George Ohlson. I
represent the plaintiff, Lincoln Smith, in this
civil action.

Could you state your full name for the
record?

A. John J. Dorsey, Junior.

MR. CHERNETSKY: We need the
stipulations. We'll just say we just
articulated stipulations. We stipulated at the
deposition not a half-hour ago and we'll proceed
under the same rules.

MR. OHLSON: Same rules. Good enough.
Likewise with the notary, we'll -- 30 days.
We're going to send you the deposition and
you'll read it and sign it, and we're going to
waive the notary.

MR. CHERNETSKY: Yes

MR. OHLSON.

Q. I'll introduce myself again. So my name is

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1 George Ohlson, I'm the attorney for Mr. Smith,
 2 the plaintiff in this civil action. Could you
 3 state your full name?
 4 A. John J. Dorsey, Junior.
 5 Q. Are you married or single?
 6 A. Single.
 7 Q. And your address. Home address?
 8 A. 5 Lexington Street, Charlestown, Massachusetts.
 9 Q. What's the highest level of education?
 10 A. Juris doctorate.
 11 Q. Where did you receive that?
 12 A. Suffolk University.
 13 Q. What year did you graduate from Suffolk?
 14 A. 2002.
 15 Q. And have you ever been deposed before?
 16 A. No, sir.
 17 Q. Where do you currently work?
 18 A. Boston Inspectional Services, 1010 Mass. Ave.
 19 Q. How long have you been there?
 20 A. About three years.
 21 Q. So what year did you start then?
 22 A. 2002.
 23 Q. What did you do before?
 24 A. I was at the mayor's office.

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1 Q. What did you do for the mayor?
 2 A. I managed media.
 3 Q. How long did you do that for the mayor?
 4 A. About seven years, since 19 -- April 1994.
 5 Q. Where were you employed in December of 2000?
 6 A. Boston Inspectional Services.
 7 Q. And what was your position there at that point?
 8 A. I did, I basically helped out with legal and
 9 I -- with some policy stuff and also to take
 10 over all the media operations.
 11 Q. Is that what you currently do there?
 12 A. I do mostly policy stuff now and Lisa Timberlake
 13 mostly does the media stuff.
 14 Q. In December 2000, whose payroll were you on,
 15 were you on Inspectional Services or the mayor's
 16 office?
 17 A. Probably Inspectional Services, December of
 18 2000.
 19 Q. Were you on a contract basis?
 20 A. Probably at that point, yes.
 21 Q. Did you work full-time or part-time?
 22 A. Full-time.
 23 Q. And did you go to school at that point?
 24 A. At night. I was an evening student.

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1 Q. Part-time law student at Suffolk?
 2 A. Correct.
 3 Q. Which essentially as we know is full-time?
 4 A. Yes, sir.
 5 Q. In December 2000, what were the duties and
 6 responsibilities of the position that you have?
 7 A. Basically, try to help out with the media, help
 8 out with some research, kind of get organized,
 9 organize more proactive outreach efforts,
 10 educational and awareness type stuff.
 11 Q. When you say research, research on what?
 12 A. Different policy type of issues.
 13 Q. So legal research?
 14 A. Some, yes.
 15 Q. What other types of research?
 16 A. Just different kinds of ideas in terms of what
 17 was working and for, you know, municipal
 18 operations, things like that.
 19 Q. What sort of media, media projects did you work
 20 on?
 21 A. Everything from home improvement contractor type
 22 stuff to, you know, everything, day-to-day
 23 outreach type stuff. Quality of life, stuff
 24 like that.

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1 Q. Who is your supervisor at this point?
 2 A. Julie Fothergill.
 3 Q. That was in December of 2000?
 4 A. Right.
 5 Q. And who is above Julie Fothergill?
 6 A. I don't know if there is a chief of staff at
 7 that time. Either commissioner or the chief of
 8 staff or the deputy commission, deputy
 9 commissioner.
 10 Q. As in December of 2000, did you -- there ever
 11 come a time where you would actually go to a
 12 property?
 13 A. Yes. I was relatively new to inspectional
 14 services at that point so I was trying to learn
 15 the field operation. It would happen pretty
 16 regularly.
 17 Q. Who would, whose decision was it for you to go
 18 to the property?
 19 A. It depends. If it was media there the
 20 inspectors would call us, sometimes the
 21 commissioner would ask me to go. It depends
 22 what the situation was.
 23 Q. What situations would the commissioner ask you
 24 to go there?

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A. If there was media there and he wanted me to deal with them.

Q. How many properties -- actually, you know what? I forgot to give you the instructions. Let me back up a second.

One of the things that I wanted to say is -- and we have already gone through quite a few questions. Only one of us can talk at a time. So if -- that's for the stenographer, she can only take down one voice.

Also, wait before you answer, wait until I finish my question. Also, answers like nod of the head and stuff like that don't work. Answers have to be audible. And if you don't understand a question, ask me to repeat it. Also, if you need to take a break, I just ask that we finish the question that I've asked. In other words, if there is a question pending, I ask you that you answer it before we take a break. Those were the ground rules I should told you about ten minutes ago.

A. Okay.

Q. So back to December of 2000, what, approximately how many properties would you say that you went

to per week?

A. I have no idea.

Q. Did you go to many that involved a situation where a tenant had no heat?

A. If there was media there or there was -- a lot of times with the field operation, just to see the inspectors in action, sure, absolutely.

Q. Did, in your position, did you ever contact the media to come to a site?

A. At times, sure. If they had called and said if we have any no heat calls, could you let us know, or a lot of times no heat is probably one of the biggest requests that we get during the wintertime for media. This most recent cold snap is a good example of that.

Q. So do you recall in December of 2000 if you ever contacted the media for a no heat call?

A. I'm sure I did. We do every -- we have a number of requests for no heat situations from six TV stations and two newspapers.

Q. What are those TV stations?

A. Network affiliates, neighborhood network news.

Q. So ABC?

A. Right.

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Q. CBS?

A. Right.

Q. NBC?

A. Correct.

Q. What are the others, I'm trying to remember?

A. Fox and WB, Tribune television.

Q. What about New England Cable news?

A. Yes. We might but I think they get a lot of their stuff from channel five.

Q. What are the two, did you say two print media?

A. Correct, Globe and Herald.

Q. Do you have contact at each one of these places?

A. I know people just from the industry but no specific contact, no.

Q. So if there was a media event, how would you get in touch with -- would you know who to call in like the Boston Globe or the Boston Herald?

A. Generally, the standard protocol of what they call the call around, is for most media outreach is you would call the assignment desk for television and whoever picks up the phone at the assignment desk, you tell them what's going on or if they had called with an earlier inquiry that you want to follow up on, that's where you

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would relay the information to.

Q. And the assignment desk would give it to a writer that would --

A. Or the reporter, they would assign the reporter and dispatch a reporter, reported to the location.

Q. Were you present at -- strike that. Do you know Mr. Smith?

A. Just from this case.

Q. When did you first meet him?

A. I know that he was at the scene that we were at that gave rise to this action.

Q. Was that on December 27, 2000?

A. I don't know the exact date.

Q. Was there a time in late December of 2000 that you were with Mr. Smith and Commissioner Joyce at 11 Newport Street?

A. Yes. Mr. Smith was there toward the end but we had gone around to several different properties that day. That was one of them.

Q. And do you remember how you -- how the decision came about on that day for you to go to this property?

A. Basically, it was the unremedied no heat calls

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1 that we often would just go out into the field,
 2 A, for learning the process at that point but
 3 also, just to see what's going on in the field.
 4 By that point, it was just we were visiting
 5 properties that still had no heat after the
 6 holiday season or that had still been without
 7 heat for several days.
 8 Q. And were you present in the commissioner's
 9 office before you left to go to 11 Newport
 10 Street on that day?
 11 A. Oh, I don't know.
 12 Q. Do you recall whether Commissioner Joyce got a
 13 call from Steven O'Donnell on that day?
 14 A. No.
 15 Q. Do you recall Commissioner Joyce stating we got
 16 him?
 17 A. Who? Steve?
 18 Q. No. Strike that. Do you recall Commissioner
 19 Joyce referring to Mr. Smith saying that we got
 20 him?
 21 A. No.
 22 Q. Do you recall any conversations that Mr. Joyce
 23 had about Lincoln Smith at any point?
 24 A. No.

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1 Q. Do you recall Julie Fothergill stating what
 2 you're doing is wrong in refusing to go to the
 3 scene at 11 Newport Street?
 4 A. No. I don't even remember Julie being involved.
 5 I took the media over pretty much.
 6 Q. So do you know who informed the commissioner's
 7 office about the no heat situation on 11 Newport
 8 Street on this day?
 9 A. Generally no heats are something that they pay
 10 very close attention to. This year we set a new
 11 record in terms of the number of no heats.
 12 Actually, we saw probably a new record in terms
 13 of compliance from a lot of landlords.
 14 Generally that's something that everyone pays
 15 very close attention to because of the danger
 16 involved with no heat during an extreme cold.
 17 Q. Do you know if you traveled with Commissioner
 18 Joyce to the scene of 11 Newport Street that
 19 day?
 20 A. I don't recall. I may have, I don't recall.
 21 Q. Why would you go to the -- why did you go to
 22 that scene on that day?
 23 A. We were out visiting all the people that still
 24 haven't remedied their no heat calls. That was

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1 one of the calls. I was also learning the field
 2 operations at that point.
 3 Q. So did you go to other properties on that day as
 4 well?
 5 A. I think two others, yes.
 6 Q. Where were they located?
 7 A. I don't remember. I don't know.
 8 Q. So do you know if Commissioner Joyce wanted you
 9 to go on this day?
 10 A. He wanted me, he probably wanted me to deal with
 11 the media. He doesn't like to deal with the
 12 media.
 13 Q. But do you have any recollection whether or not
 14 he gave you any instructions to go?
 15 A. Not that I know. I probably volunteered to go
 16 because I really wanted to learn how things
 17 operated. And also, if there was any media
 18 there, I wanted to be able to deal with them
 19 because that was my responsibility.
 20 Q. Do you remember who else was there on that day?
 21 A. The tenants, and there were probably some
 22 inspectors. I don't know who the inspector on
 23 the case was.
 24 Q. Do you know if -- was there a contractor by the

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1 name of Dorey Fuel?
 2 A. I know a contractor eventually showed up. We
 3 had attempted to contact Mr. Smith to see what
 4 was going on. Apparently, there had been some
 5 communication. Apparently, there was no remedy
 6 forthcoming.
 7 Q. Do you know if, when you got to the scene, did
 8 you see a contractor there?
 9 A. I remember one eventually came but I think that
 10 was after attempts were made to contact the
 11 property owner.
 12 Q. Was that only one contractor that came?
 13 A. I don't remember if there were.
 14 Q. Did Inspectional Services have an independent
 15 contractor that came?
 16 A. I know that one contractor came. It was either
 17 one that we got through Neighborhood Development
 18 or one we got or one that the property owner
 19 got.
 20 Q. Do you ever feel threatened by Mr. Smith?
 21 A. Me personally, no.
 22 Q. Do you know if anybody in -- that generally
 23 people were there from Inspectional Services on
 24 that day?

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1 A. No.

2 Q. Would you say that there was -- do you remember

3 if Paul Nally was there?

4 A. No, I don't remember if he was.

5 Q. Shawn Croke?

6 A. He worked for the department at that point but I

7 don't know if he was there.

8 Q. Do you remember anybody saying they felt

9 threatened by Mr. Smith?

10 A. Not at that time. After the fact, a couple of

11 days afterward, they were talking about what

12 happened. Just debrief on the no heat

13 situations.

14 Q. What was said in that conversation?

15 A. Through third hand someone had said something

16 about contacting Counselor Kelly about

17 threatening his job, threatening inspectors'

18 jobs.

19 Q. Who was saying that?

20 A. It was, I think it was Steve O'Donnell or one of

21 the inspectors. I don't remember clearly at

22 that point. It wasn't the topic of

23 conversation. It was kind of an afterthought to

24 just how the no heats were going and how no heat

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1 season had gone.

2 Q. Was Steve O'Donnell there on that date?

3 A. I'm sure he was there at some point.

4 Q. For the record, if I told you that the date in

5 question was December 27, 2000, would that seem

6 to refresh your memory?

7 A. No. I just know it was after, just after

8 Christmas.

9 Q. How many inspectors would typically go to a no

10 heat situation?

11 A. It depends on how large the unit is really.

12 Q. How many personnel from ISD would typically go?

13 A. It depends if it's a relocation, or if there is

14 building needs or plumbing needs, or it depends.

15 Q. Would the fact that it was a media event

16 determine how many Inspectional Services?

17 A. No, absolutely not. Other than personnel to

18 manage the media.

19 Q. You said when you got there, Mr. Smith wasn't

20 there?

21 A. No.

22 Q. Was there a contractor trying to put in a new

23 furnace when you got there?

24 A. I don't remember. I know there was one

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1 eventually on the scene but I don't remember if

2 there was one when I first got there.

3 Q. Do you know who was there when you first got

4 there?

5 A. The tenants and probably an inspector.

6 Q. Do you remember the contractor Comfort Heating,

7 does that --

8 A. No. I don't remember any of the contractor's

9 names.

10 Q. Do you have any dealings with the independent

11 contractors that come to, that Inspectional

12 Services may use?

13 A. No.

14 Q. Do you ever, did you ever call Dorey Fuel at any

15 point?

16 A. No. I wouldn't contract with them.

17 Q. Do you have any knowledge as to when they would

18 use an independent contractor and when they

19 wouldn't, when they would let the landlord take

20 care of it?

21 A. I think if there is an emergency situation, they

22 probably would contact someone. If there was no

23 remedy forthcoming but they might contact

24 someone.

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1 Q. If a landlord had his own contractor?

2 A. Right.

3 Q. Would it be necessary for Inspectional Services

4 to get a contractor?

5 MR. CHERNETSKY: Objection.

6 A. It depends. There's a contractor doing the

7 work, is there going to be a remedy forthcoming.

8 Q. Do you remember Commissioner Joyce at any point

9 not allowing Mr. Smith's contractor from doing

10 the work?

11 A. I don't recall. No, I think the objective was

12 to remedy the situation.

13 Q. Do you remember whether the contractor was going

14 to repair the furnace rather than replace the

15 furnace?

16 A. I don't remember that level of detail.

17 Q. And, then, do you remember anything about

18 Commissioner Joyce being told that if you repair

19 the furnace rather than replaced it, that carbon

20 monoxide would be sent throughout the whole

21 building?

22 A. No. All I know is that there was just from my

23 own personal observation, if the furnace itself

24 was filled with soot, there was a trash bag with

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1 some soot and there would seem to be some soot
2 around the baseboard but other than that, I
3 don't remember much about what the condition of
4 it was.

5 Q. Do you remember whether or not Commissioner
6 Joyce's ordered his inspectors to go through the
7 property with a fine tooth comb to find every
8 violation?

9 A. No. The inspectors have a legal obligation to
10 classify violations when they saw them, when
11 they see them. It would be pointless to do
12 that. In fact, I remember the inspectors wrote
13 up one of the occupants as well on one of the
14 units.

15 Q. I'm not sure if you answered my question. I
16 guess my question is, I understand what you are
17 saying what their legal obligation is, but do
18 you recall whether Commissioner Joyce said that
19 or not?

20 A. No, I wouldn't.

21 Q. Do you recall whether or not Commissioner Joyce
22 said that I'm going to treat you like I treated
23 Clifford Davis?

24 A. I don't remember that.

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1 Q. Do you recall anything about whether or not
2 Mr. Joyce paid special attention to certain
3 cases, whether or not all activity in a case had
4 to go through him?

5 MR. CHERNETSKY: Objection.

6 A. No. I think when inspectors would bring
7 questions to him or managers would bring
8 questions to him or there was a question as to
9 how to proceed, that's the only time he would
10 really only become involved.

11 Q. Do you know if Mr. Joyce had any special
12 interests in Mr. Smith's case?

13 A. Other than the fact to see the heat turned back
14 on, no. Similar to the other two cases as well.

15 Q. Where do you get your information when you speak
16 to the media?

17 A. Generally, from the inspectors or from the
18 scene.

19 Q. When you say from the scene, does that mean you
20 get the information from your own observations?

21 A. No. Sometimes the inspectors would relay it.
22 I'm not an inspector so I don't know how to
23 classify the violations. I know what the
24 process is but I generally get it from the

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1 inspectors.

2 Q. Do you have any background in the state sanitary
3 code?

4 A. At that point, I did not.

5 Q. Do you have any background now?

6 A. Just practical application. Not from actual
7 violation but just process and sections, things
8 like that.

9 Q. Learning on the job?

10 A. Correct.

11 Q. Do you ever include the mayor's office in any of
12 Inspectional Services media events?

13 A. Just as part of the chain of command. It's part
14 of the chain of command for having anything to
15 do with the media. I will generally as a
16 protocol let them know what's going on.

17 Q. Do you know if you did that in Mr. Smith's case?

18 A. We probably just let them know there was no heat
19 calls but not particularly who they were. We
20 were just getting media attention. There's so
21 many things going through that office, they
22 don't need to know that level of detail.

23 Q. Well, how much detail?

24 A. We would let them know the media outlets that

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1 are inquiring and what the situation is, they're
2 doing no heat calls. If they want more, they'll
3 let us know.

4 Q. Is there anybody in the mayor's office that
5 would do -- get independent information from
6 Inspectional Services that you know of?

7 A. No. Generally not, no.

8 Q. So with a no heat call, the mayor, mayor's
9 office would only find out about their
10 information from Inspectional Services, would
11 you say?

12 A. The mayor's 24-hour hotline takes in a lot of
13 calls for no heat calls and they're referred
14 over to Inspectional Services.

15 Q. Let me start with this. Are you familiar with
16 something called the Worst Landlord List?

17 A. No.

18 Q. Does Inspectional Services have such a thing?

19 A. No. We have a student housing database, that
20 some caller requested to see when calls -- to
21 see which properties we're having problems with.
22 The different colleges but we don't have a worst
23 landlord list, no.

24 The department may have had one at one

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1 time but no, we've discontinued anything like
 2 that if there was one. I have no knowledge of
 3 the worst landlord list.
 4 Q. I'll come back to that. Where do you -- you get
 5 your information from inspectors at the scene,
 6 that's correct, that's what you said before?
 7 A. Generally, yes.
 8 Q. And before you speak to the media, do you do
 9 anything to check the accuracy of the
 10 information that you get?
 11 A. Basically talk to a manager about it sometimes.
 12 Other than that, no.
 13 Q. Who would the manager be?
 14 A. It depends on what the division is.
 15 Q. You're saying a manager within the inspectors?
 16 A. Right. The housing, building, weights and
 17 measures.
 18 Q. Do you know of anything, any animosity between
 19 the mayor's office and Mr. Smith?
 20 A. Right now, no, not that I know of.
 21 Q. Do you recall if you had a conversation with
 22 Teri Adler in December 2000 regarding this case?
 23 A. No, I don't.
 24 Q. No, you didn't have a conversation?

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1 A. I don't recall.
 2 Q. What about -- do you remember whether Miss
 3 o'Shea was on the property that day?
 4 A. Who's Ms. O'Shea?
 5 Q. Elizabeth O'Shea, the tenant from unit one with
 6 the no heat complaint?
 7 A. I don't know what -- there was an elderly woman
 8 there and her daughter.
 9 Q. Do you know was she, what was her demeanor like
 10 on that day?
 11 A. She was angry and frustrated.
 12 Q. Why was she angry and frustrated?
 13 A. Because of her situation.
 14 Q. What situation was that?
 15 A. The no heat condition.
 16 Q. Did you have a conversation, sorry, did you have
 17 a conversation with the third floor tenant,
 18 Palmira Williams?
 19 A. I don't recall particular conversations I had
 20 from three or four years ago.
 21 Q. Did you ever have a conversation with Amber
 22 Bollman from the Boston Globe?
 23 A. She was an intern at the Boston Globe.
 24 Q. Is that a yes or no?

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1 A. Yes.
 2 MR. CHERNETSKY: If I could clarify
 3 the question. Are you asking in reference to
 4 this incident?
 5 A. I don't remember. With the situations like
 6 this, they trade hands and one person can take
 7 the notes and another person can write it. I
 8 talked to her probably on a number of different
 9 issues during her six months there.
 10 Q. Did you recognize this article?
 11 A. I don't recognize it, no. I know it's from the
 12 Boston Globe.
 13 MR. OHLSON: We're going to mark this
 14 as Exhibit 1.
 15 (Exhibit 1 marked for identification.)
 16 Q. Do you remember what the reasons were for you
 17 contacting or do you know if you contacted Ms.
 18 Bollman for this article or whether she
 19 contacted you?
 20 A. I don't remember.
 21 Q. Were there ever times she contacted you?
 22 A. Sure. Or the mayor's office or refer a call
 23 over or the editor will call.
 24 Q. Did you ever contact her?

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1 A. During -- I'm sure at six months she was there,
 2 I'm sure at some point I did.
 3 Q. Can you read this statement in parentheses here?
 4 A. "ISD spokesman John Dorsey said Smith waited far
 5 too long before ordering and installing a new
 6 furnace."
 7 Q. Is that, do you know if this is what you
 8 actually -- accurately said to the Boston Globe?
 9 A. Well, it's paraphrased. It's not in quotes.
 10 And I don't even know if Amber was the one that
 11 asked the questions. There could have been
 12 another person that gave the notes to her and
 13 wrote it. It could have been something that her
 14 editor paraphrased. Honestly, I don't know.
 15 Q. Is that inaccurate?
 16 A. Well, if he -- if the property owner was given
 17 notice of a violation such as no heat, they
 18 generally have 24 hours before they have to
 19 start making remedies. So by the 27th, that was
 20 more than 24 hours.
 21 Q. What do you mean by start making a remedy?
 22 A. Basically, start the repairs.
 23 Q. Even if -- that would be true even on a weekend
 24 where a contractor is unavailable?

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1 A. Sure, absolutely.

2 Q. Or even during the Christmas weekend?

3 A. The code doesn't specify exemptions for

4 holidays.

5 Q. Is that true even if an apartment was going to

6 be abandoned for a weekend, would it be

7 necessary -- strike it out. If an apartment was

8 abandoned in your opinion, is it the same kind

9 of emergency situation as someone that was

10 actually living in the property with no heat?

11 MR. CHERNETSKY: Objection.

12 A. I think most, some tenants relocate when they

13 can't get the remedy done in time. So that is

14 one option but I think by this point the weekend

15 had expired.

16 Q. If you point down here, there's another quote

17 here, it starts with "If you're going to," could

18 you read that?

19 A. "If you're going to make a business of providing

20 a basic service such as housing, it's not

21 something you can do at your own convenience, "

22 Dorsey said. "It's a full-time commitment and

23 something that should not be taken lightly."

24 Q. Do you remember whether that was your accurate

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1 words?

2 A. I don't remember if it's my accurate words.

3 Again, sometimes things even in quotes can be

4 paraphrased to be more concise by editors but

5 I'm sure the general idea is accurate.

6 Q. Accurate as to what you said?

7 A. Accurate, I may have been speaking about no heat

8 in general but not about this particular case.

9 It was editorially used to apply to this case.

10 Some of the interview may have been used to

11 speak about the no heat issue in general.

12 Editorially, if they decide to focus on one

13 case, that's something we don't have control

14 over.

15 Q. Did you speak to the mayor at all directly about

16 the no heat issue for Lincoln Smith?

17 A. I probably spoke to the mayor's press office.

18 Q. Who did you speak to there?

19 A. I probably, like I said, I relayed the

20 information to the mayor's press office.

21 Q. So you're saying that you did not speak with the

22 mayor?

23 A. Not that I know of. It's three years ago, four

24 years ago.

Beacon Hill Court Reporting

1 Q. Do you recognize, do you recognize this Boston

2 Globe article? I'll give you this copy.

3 A. I know it's from the Boston Globe. I don't

4 recall it off the top of my head.

5 Q. And if I was to say that this was February 24,

6 2001, would that --

7 A. No.

8 Q. Does this refresh your recollection if you --

9 did you speak with the Katherine Zezima?

10 A. I don't recall.

11 Q. This section here, where it has your name, could

12 you read that?

13 A. "Spokesman June Dorsey said inspectors went back

14 to the house three days ago to check on another

15 violation which had been fixed and found that

16 Williams' hot water was still not restored."

17 Q. Did -- first of all, is that -- that's not a

18 quote from you, right?

19 A. That's paraphrased.

20 Q. Do you remember speaking to the Boston Globe

21 about this situation saying that statement?

22 A. Is this the same from December?

23 Q. This is regarding the Palmira Williams case?

24 A. Is that from December?

Beacon Hill Court Reporting

1 Q. No, it's not.

2 A. I don't remember this case.

3 MR. OHLSON: If we could mark this as

4 Exhibit 2.

5 (Exhibit 2 marked for identification.)

6 Q. If we could, okay. I wanted to go back to

7 Exhibit 1, if we could. Could you read this

8 quote by the mayor?

9 A. "This is unconscionably wrong, Mayor Thomas M.

10 Menino said in an interview yesterday. How can

11 you let a person stay for five days with no

12 heat? It's even worse because it's a public

13 official, someone who deals with public policy

14 and is familiar with the law."

15 Q. How would the mayor's office get all that

16 information?

17 A. Probably they ask who owns the property a lot of

18 times, and that's -- the mayor has been in the

19 City Council, he's a public official since 1983.

20 Q. Would you tell them, so you would tell them the

21 property owner?

22 A. Right.

23 Q. And would you tell them the amount of days that

24 heat was out on the property?

Beacon Hill Court Reporting

1 A. Well, if they had an interest they would call
2 back and say, Okay, what's going on, what's the
3 situation there? Or sometimes the media will
4 call and they want -- if it's a situation
5 they'll call around to different public
6 officials and ask them what they think. And so
7 they may call up the mayor and say what do you
8 think about the situation so they'll call us and
9 ask, well, what is the situation? What's going
10 on?

11 Q. Do you recall if the mayor's office called you
12 on this case?

13 A. No, I don't. I know no heat is generally a big
14 issue. It's something that the mayor is
15 concerned about and wants us to respond to and
16 be able to respond to 24 hours a day.

17 Q. In 2000, did you work in the mayor's press
18 office at all?

19 A. Yes.

20 Q. Did you work in the mayor's press office in
21 December of 2000?

22 A. Not that I know of. I mean I did some work for
23 them but I was based out of 1010 Mass. Ave.

24 Q. So when you say you did some work for them, what

Beacon Hill Court Reporting

1 do you mean by that?

2 A. Special projects. I do work with Patricia
3 Malone, different things like that, doing
4 consumer outreach.

5 Q. Who is Patricia Malone?

6 A. She's the consumers affairs director.

7 Q. So how many hours a week was your work for the
8 mayor's office?

9 A. I don't know, I don't recall.

10 Q. Did you, were you working in financial services
11 full-time?

12 A. I was basically using the office there and
13 sometimes I was doing work for ISD; sometimes I
14 was doing work for the mayor's office but the
15 work with Patricia Malone was primarily because
16 of the home improvement contractor outreach we
17 were doing so it was related to ISD.

18 Q. Was any of that related to a no heat situation?

19 A. No.

20 Q. I'm sorry.

21 A. It was all basically elderly consumers and home
22 improvement contractor stuff.

23 Q. Do you recall if Mr. Smith ever called the
24 mayor's hot line regarding the issue with the no

Beacon Hill Court Reporting

1 heat?

2 A. I do remember hearing something about after the
3 fact, after it all transpired.

4 Q. What did you hear?

5 A. That he had called and just wanted to see what
6 the situation was. He was calling 24 hours to
7 see what the situation was.

8 Q. Do you know when he called?

9 A. No.

10 Q. Do you know if when he called, he said that he
11 couldn't get into the apartment because the
12 tenant wouldn't let him in and he had went out
13 and purchased space heaters?

14 A. No. I just -- I know that the reason why it
15 came up because they were wondering why he
16 called the mayor's office instead of ISD.

17 Q. Do you know if he tried to call, he tried to get
18 ISD, their help into getting into the property?

19 A. Right.

20 Q. But the tenant wouldn't let him in, were you
21 aware of that?

22 A. No.

23 Q. And if I could back up a second?

24 A. Sure.

Beacon Hill Court Reporting

1 Q. So when you made these statements to the media,
2 you weren't given the information that he tried
3 to get space heaters?

4 A. No. I don't recall what information I was given
5 at that point. I may have, I may not have.

6 Q. You just told me that you didn't know he called
7 the mayor's hot line until the day after the
8 fact, is that correct?

9 A. Right. So by that time, it may have been
10 information I was given at the scene, it may
11 have been information I was given by the tenant,
12 it may have been information the tenant gave
13 during the interview. I don't know.

14 Q. Do you know his calls were at night, one in
15 which was at 10:30 p.m., and were you ever told
16 that he was calling, he called the mayor's hot
17 line, he received a call back close to midnight,
18 were you ever told of anything?

19 MR. CHERNETSKY: Objection.

20 A. I don't know what the time was.

21 Q. Do you remember what days of the week these --
22 the time line was with the no heat call?

23 A. No. I vaguely remember the initial call came in
24 for Christmas, and then I think we went out like

Beacon Hill Court Reporting

1 a couple of days or a day or two after Christmas
2 for the ones that hadn't been remedied still.

3 Q. If I told you that Christmas was on a Monday,
4 and the day you were able to go out was December
5 27, which was a Wednesday, and the first day
6 that Mr. Smith could call a contractor was
7 Tuesday, the 26th, does that --

8 MR. CHERNETSKY: Objection.

9 Q. Does that, were you ever told about that?

10 A. I think the law requires a remedy. It doesn't
11 really provide for any exemptions for holidays.

12 Q. Were you aware that the property needed a new
13 furnace?

14 A. When I observed it, I just knew that heat was
15 not working. I saw the soot and the furnace and
16 that there was no heat.

17 Q. Do you have any background in heat, ventilation
18 and air-conditioning?

19 A. I relied on what the inspectors told us.

20 Q. Do you have a license in that area?

21 A. No, I don't have a license.

22 Q. Do you have any special licenses in Inspectional
23 Services or anything?

24 A. No.

Beacon Hill Court Reporting

1 Q. What was your undergraduate degree in?

2 A. Journalism.

3 Q. Have you ever dealt with Teri Adler at Channel
4 7?

5 A. I'm sure.

6 Q. And what circumstances did you deal with her?

7 A. News stories.

8 Q. For ISD?

9 A. Sure.

10 Q. And the mayor's office?

11 A. Mm-hmm.

12 Q. Was there ever a time that she refused to go
13 forward with a story that you were working on?

14 A. No, not that I recall.

15 Q. Do you know if she refused to go forward with a
16 story about Lincoln Smith?

17 A. No.

18 Q. Julie Fothergill, she was your supervisor, is
19 that right?

20 A. Right.

21 Q. Do you remember whether or not there was -- she
22 refused to sign a document at all?

23 A. No.

24 Q. This is Exhibit 1 from the previous deposition.

Beacon Hill Court Reporting

1 So can we mark this, what are we up to now? Is
2 it three?

3 MR. CHERNETSKY: Yes.

4 (Exhibit 3 marked for identification.)

5 Q. Did you recognize this document at all?

6 A. It's the standard NOV packet that we would send
7 out.

8 Q. What is a NOV packet?

9 A. It's where there are multiple violations for a
10 property, you organize them out of one packet.

11 Q. What does N-O-V stand for?

12 A. Notice of violation.

13 Q. Do you recognize this signature?

14 A. I know it's Julie Fothergill's signature.

15 Q. Do you know who initialed this?

16 A. Lisa Palmer.

17 Q. Could that be Lisa Timberlake?

18 A. It could, I don't know. It looks like an LP.

19 Q. Do you know if -- do you recall if Julie
20 Fothergill refused to sign this document?

21 A. No. I honestly don't remember being involved
22 with the case other than she would put together
23 NOV packets periodically. She could have been
24 but --

Beacon Hill Court Reporting

1 Q. Do you have her current position?

2 A. No.

3 Q. I'm sorry.

4 MR. CHERNETSKY: Objection.

5 Q. Strike that. What position was hers when she
6 was your supervisor?

7 A. She had two different positions. I forget what
8 the previous one was but then she changed to an
9 assistant commissioner position.

10 Q. And what is your title now?

11 A. Assistant commissioner of communications and
12 policy.

13 Q. Was that a title that she held at one point?

14 A. I think she was assistant commissioner of policy
15 and planning and then she got promoted to the
16 legal division, head of the legal division.

17 Q. Were you in the building when, on December 27,
18 2000, when a call for no heat came in, do you
19 know if you were there?

20 A. I don't remember.

21 MR. CHERNETSKY: Objection.

22 Q. Did you travel with anybody to the scene on
23 December 27, 2000?

24 A. I don't remember, I may have.

Beacon Hill Court Reporting

(Discussion off the record.)

MR. OHLSON: Give me a minute.

Q. Where is your office relative to Julie Fothergill?

MR. CHERNETSKY: Objection. Today?

Q. Strike that. Where was your office in 2000?

A. Next to hers.

Q. Was she in work on December 27?

A. I don't remember.

Q. In the office there, who signs legal documents, is it typically?

A. If they're trying to get it out quick, they -- someone might, the person who's signing it whose signature is on it may approve it and send it back to someone. Whoever they send it back to may sign it for them and send it out.

Q. Is it --

A. But only with, only after the person has signed off on it as good to go.

Q. Does anything ever get signed without the person seeing a draft of the --

A. No.

Q. -- the document? Where is Inspector Nally's office?

Beacon Hill Court Reporting

A. Inspector Nally's in 2000?

Q. Yes.

A. I think it was in project, I think I'm not positive, I think it was down on the fourth floor or over in the housing division.

Q. Did he ever travel with you and the commissioner?

A. Sometimes, yes.

Q. And what circumstances would those be?

A. A variety of circumstances. If he was going out to a scene, different situations.

Q. A no heat call?

A. No heat, collapsed building, a variety, community meeting.

Q. Do you know Tony Jones?

A. No.

Q. What about Stephen O'Donnell?

A. Yes.

Q. How do you know Steve O'Donnell?

A. He's a supervisor at the housing division.

Q. And do you interact frequently with him?

A. Yes, on a regular basis.

Q. How long have you known him?

A. About three or four years.

Beacon Hill Court Reporting

Q. Do you know if he was involved at all with -- strike it out. Do you know if he was working on December 27?

A. No, I don't.

Q. Do you recall whether or not he talked to Commissioner Joyce at all about Mr. Smith and the no heat situation around that time?

A. As a housing manager, he probably spoke with people in the commissioner's office about the no heats, yes. If it was an existing no heat on the 27th, he probably did.

Q. Would a situation where a no heat went for a while without being remedied, is that a type of thing that the commissioner would get involved in?

A. Yes. He probably -- he would probably go out into the field to see what the status was and make sure the tenants were okay and check on the inspectors. That's pretty standard. He did it this year; he does it every year.

MR. OHLSON: If we could have a minute.

(Recess.)

Q. Sorry about the delay. If we can go back on the

Beacon Hill Court Reporting

record. Do you know where Tony Jones is now?

A. No.

Q. Did you ever know him?

A. No.

Q. Do you know Lesley Christos?

A. Yes.

Q. Was he working for the department in December of 2000?

A. I don't remember.

Q. Do you know if he still works for the department?

A. Yes, he does.

Q. What's his position?

A. He's a housing inspector.

Q. Did you have conversation with Tony Jones -- strike that -- with Lesley Christos about the no heat situation?

A. I don't remember.

Q. Did you have a conversation with Steve O'Donnell about the no heat situation?

A. I probably spoke to whoever the inspectors were dealing with the situation.

Q. Do you remember who the inspectors present on the 27th were?

Beacon Hill Court Reporting

1 A. No.

2 Q. So if I understand correctly from what you said

3 before, you were working at the mayor's office

4 and also working for ISD at the same time in

5 December 2000?

6 A. I was doing some work for the mayor's office but

7 I was working for ISD.

8 Q. So could you be on both payrolls or are you --

9 A. No, I was, basically I worked like two days a

10 week for the mayor's office and I worked for

11 three days a week for ISD or two days a week

12 for. Basically it would vary.

13 Q. Whose payroll?

14 A. I was a contract employee.

15 Q. For?

16 A. For the mayor's office and for ISD.

17 Q. Would you get one paycheck per week or two?

18 A. I don't remember at that point but I was

19 basically, I was just working on special

20 projects for the mayor's office.

21 Q. And you never had a conversation with Mayor

22 Menino about Mr. Smith's situation even though

23 you worked in the press office at that time?

24 MR. CHERNETSKY: Objection.

Beacon Hill Court Reporting

1 A. I didn't work in the press office at that time.

2 I was working for some particular projects but

3 they had nothing to do with no heat.

4 I wouldn't speak directly to the

5 mayor. I would give the information to the

6 mayor's press office but that's regardless of,

7 that's just the protocol. All the line

8 departments do that.

9 MR. OHLSON: I have no more questions.

10 CROSS-EXAMINATION

11 MR. CHERNETSKY:

12 Q. Mr. Dorsey, if I could turn your attention to

13 what was marked as Exhibit 3 in this complaint,

14 it's right in front of you right there. If you

15 look at the second page there's a signature

16 block for Julie Fothergill there?

17 A. Mm-hmm.

18 Q. And looking at that, does that refresh your

19 memory as to what Julie Fothergill's position

20 with ISD was in December of 2000?

21 A. Director of policy and planning.

22 Q. I also would like you to look at Exhibit No. 1.

23 I guess you probably have that, George.

24 Let me ask you first, in December of

Beacon Hill Court Reporting

1 2000, you had only recently gone to work for

2 ISD?

3 A. Correct.

4 Q. But did you have prior experience in media

5 relations, correct?

6 A. Correct.

7 Q. You worked in the mayor's office on media issues

8 for approximately six years?

9 A. Six or seven years.

10 Q. Your undergraduate major was in journalism?

11 A. Correct.

12 Q. Through that experience, do you have knowledge

13 of how media outlets compile their stories?

14 A. Yes.

15 Q. Print media in particular?

16 A. Right.

17 Q. If you would look at Exhibit No. 1 which is two

18 pages, the first page that has the headline, the

19 last paragraph to begin on that page, it says,

20 "Smith who in 1998 was cited as one of the

21 city's worst landlords has been feuding with the

22 administration of Menino and former mayor

23 Raymond L. Flynn -- and it continues on the next

24 page -- since 1986 when he was fired by then

Beacon Hill Court Reporting

1 city personnel chief Robert Consalvo, C O N S A

2 L V O." Do you have an understanding as to how

3 the Boston Globe would get that type of

4 information?

5 A. Well, if they've done previous stories, a lot of

6 times what reporters will do is they'll pull up

7 archived and see what else they can get on a

8 story or person or they'll take that information

9 and put it in.

10 Q. Did anybody at the Globe ask you questions about

11 Mr. Smith's political affiliations?

12 A. I don't remember, no.

13 Q. Did anybody?

14 A. I wouldn't have knowledge of this stuff right

15 here until I read it now. In fact, prior to

16 this, I thought I knew that he was involved in a

17 lawsuit but I thought it was against Counselor

18 O'Neill.

19 Q. You didn't yourself have knowledge in December

20 of 2000 of Mr. Smith's political affiliations

21 past or present?

22 A. What do you mean, by Democratic Republican?

23 Q. The kinds of thing that we've just were

24 describing?

Beacon Hill Court Reporting

1 A. I knew he was involved in a lawsuit with the
 2 city but I thought it was against Counselor
 3 O'Neill.
 4 Q. Did you tell the Globe in December of 2000 that
 5 Mr. Smith had been involved in a lawsuit with
 6 the city?
 7 A. I don't remember. I don't think it would have
 8 been relevant.
 9 Q. It's your understanding that they possessed that
 10 information already?
 11 MR. OHLSON: Objection.
 12 A. I don't think I would have even considered
 13 because the issue was no heat. It wasn't -- our
 14 objective was stick to message and it was no
 15 heat. It wasn't the person.
 16 MR. OHLSON: That is all.
 17 MR. CHERNETSKY: That is all I have
 18 got.
 19 REDIRECT EXAMINATION
 20 MR. OHLSON:
 21 Q. Do you know who Robert Consalvo is?
 22 A. City counselor.
 23 Q. Have you ever met him before?
 24 A. Oh, yes, I met him. He's a city counselor.

Beacon Hill Court Reporting

1 Q. Do you know the circumstances in which that
 2 case -- strike that. Do you know anything about
 3 that civil suit?
 4 A. No, absolutely not.
 5 MR. OHLSON: That is all I have.
 6 MR. CHERNETSKY: Okay.
 7 (Whereupon, the deposition closed at 12 o'clock
 8 noontime.)
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Beacon Hill Court Reporting

SIGNATURE PAGE/ERRATA SHEET

1
 2 Re: Lincoln Smith vs city of Boston, et al
 3 Date February 20, 2004
 4 Deposition of: John J. Dorsey, Jr.

5 I, John J. Dorsey, Jr., do hereby certify
 6 that I have read the foregoing transcript of my
 7 testimony and further certify that it is a true
 8 and accurate record of my testimony (with the
 9 exception of the following changes listed
 10 below):

11 Page Line Correction
 12
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 21
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 23
 24

Signed under the pains and penalties of
 perjury this day of , 2004.

John J. Dorsey, Jr.

Beacon Hill Court Reporting

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

1 I, Irma Widomski, Registered Merit
 2 Reporter and Certified Shorthand Reporter,
 3 016512, in and for the Commonwealth of
 4 Massachusetts, do hereby certify that there came
 5 before me on the 20th day of February, 2004, at
 6 10:45 a.m., the person hereinbefore named, who
 7 was by me duly sworn to testify to the truth and
 8 nothing but the truth of his knowledge touching
 9 and concerning the matters in controversy in
 10 this cause; that he was thereupon examined upon
 11 his oath, and his examination reduced to
 12 typewriting under my direction; and that the
 13 deposition is a true record of the testimony
 14 given by the witness.

15 I further certify that I am neither
 16 attorney nor counsel for, nor related to or
 17 employed by, any of the parties to the action in
 18 which this deposition is taken, and further that
 19 I am not a relative or employee of any attorney
 20 or counsel employed by the parties hereto or
 21 financially interested in the action.

22 In witness whereof, I have hereunto
 23 set my hand and seal this 3 day of March ,
 24 2004.

Irma Widomski, Notary Public
 My Commission expires:
 January 22, 2010

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